

Bill No. SB 1226

Barcode 175448

581-1890D-07

Proposed Committee Substitute by the Committee on Education
Pre-K - 12

1 A bill to be entitled

2 An act relating to compensation for district

3 school board employees; creating s. 1012.225,

4 F.S.; establishing the Merit Award Program for

5 Instructional Personnel and School-Based

6 Administrators; requiring that a district

7 school board adopt a Merit Award Program plan

8 in order to receive funding under the program;

9 authorizing charter schools to participate in

10 the program or adopt an alternative plan;

11 providing for the plan to be subject to ch.

12 447, F.S., relating to collective bargaining;

13 providing for the reversion of funds that are

14 not distributed when a district or charter

15 school chooses not to adopt a plan; providing a

16 formula for disbursing merit-based pay

17 supplements to high-performing employees;

18 requiring each school district to document to

19 the Department of Education the district's

20 expenditures under its plan; requiring that

21 undisbursed funds be remitted to the

22 department; providing that the merit-based pay

23 supplements are in addition to other salary

24 adjustments; providing requirements for

25 assessing instructional personnel which include

26 evaluating student performance; requiring

27 district school boards to inform employees of

28 the criteria for evaluations under the plan;

29 requiring the department to assist school

30 districts in developing program plans and to

31 approve model plans; requiring each

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1 participating district school board to submit
2 its plan to the Commissioner of Education for
3 review; requiring the commissioner to identify
4 required revisions in a district's plan;
5 requiring that any revision made to a plan be
6 reviewed by the commissioner; requiring each
7 school board to annually document its
8 compliance to the Commissioner of Education;
9 requiring a report to the Governor and the
10 Legislature; authorizing the State Board of
11 Education to adopt rules; amending s. 121.021,
12 F.S.; defining merit award supplements as
13 compensation; amending s. 447.403, F.S.;
14 providing a procedure for resolving an impasse
15 with respect to a dispute involving a Merit
16 Award Program Plan; requiring that a specified
17 portion of general revenue funds revert to the
18 General Revenue Fund; repealing a specified
19 portion of Specific Appropriation 91 in s. 2,
20 ch. 2006-25, Laws of Florida; providing an
21 appropriation and specifying purposes;
22 repealing s. 3, ch. 2006-26, Laws of Florida,
23 relating to an implementing provision for the
24 Special Teachers Are Rewarded performance pay
25 plan (STAR Plan); repealing s. 1012.22(1)(c)4.,
26 F.S., relating to a performance-pay policy for
27 school administrators and instructional
28 personnel; suspending rules adopted by the
29 State Board of Education which are in conflict
30 with such provisions; providing an effective
31 date.

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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 1012.225, Florida Statutes, is
4 created to read:

5 1012.225 Merit Award Program for Instructional
6 Personnel and School-Based Administrators.--

7 (1) ELIGIBILITY.--In order to be eligible for funding
8 under this section, a district school board must adopt a Merit
9 Award Program plan that provides for an assessment and bases a
10 portion of each employee's compensation on the performance of
11 students assigned to his or her classroom or school. Charter
12 schools may participate in the program by using the district's
13 Merit Award Program plan or may adopt an alternative Merit
14 Award Program plan as provided in paragraph (5)(b). All
15 instructional personnel, as defined in s. 1012.01(2)(a)-(d),
16 and school-based administrators, as defined in s.
17 1012.01(3)(c), are eligible to receive merit awards, except
18 that districts need not include part-time or substitute
19 teachers in the Merit Award Program plan. The district school
20 board may not require instructional personnel or school-based
21 administrators to apply for an award, or make any
22 presentation, in order to be assessed for or receive a merit
23 award. A plan is subject to negotiation as provided in chapter
24 447. The Department of Education may not distribute any
25 portion of pro rata funding to a district, or to a district
26 for a charter school within the district, if the district or
27 charter school chooses not to adopt a Merit Award Program plan
28 under this section. Undistributed funds shall be considered
29 unobligated and shall revert to the fund from which the
30 appropriation was made in accordance with s. 216.301.

31 (2) PAY SUPPLEMENTS STRUCTURE.--Merit Award Program

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1 plans shall provide for the annual disbursement of merit-based
2 pay supplements to high-performing employees in the manner
3 described in this subsection.

4 (a) Each Merit Award Program plan must designate the
5 top instructional personnel and school-based administrators to
6 be outstanding performers and pay to each, by September 1 of
7 the following school year, a merit-based pay supplement of at
8 least 5 percent of his or her salary. The top instructional
9 personnel and school-based administrators must include at
10 least 20 percent and no more than 80 percent of the district's
11 instructional personnel and school-based administrators. Each
12 merit-based pay supplement provided under this section shall
13 be considered as compensation for the purpose of calculating
14 retirement benefits under chapter 121, but is a nonrecurring
15 supplement that does not continue as a permanent salary
16 adjustment in years subsequent to the year in which it is
17 paid. Pay supplements shall be funded from moneys appropriated
18 by the Legislature under this section and from any additional
19 funds that are designated by the district for the Merit Award
20 Program. By October 1 of each year, each school district shall
21 provide documentation to the Department of Education
22 concerning the expenditure of legislative appropriations for
23 merit-based pay, and shall refund undisbursed appropriations
24 to the department. If such undisbursed funds are not remitted
25 to the department by November 1, the department shall withhold
26 an equivalent amount from the district's allocation of
27 appropriations made under s. 1011.62.

28 (b) A Merit Award Program plan may include additional
29 pay supplements under this section for employees who manifest
30 exemplary work attendance.

31 (c) Merit-based pay supplements shall be awarded in

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1 addition to any general increase or other adjustments to
2 salaries which are made by a school district. An employee's
3 eligibility for or receipt of merit-based pay supplements
4 shall not adversely affect that employee's opportunity to
5 qualify for or to receive any other compensation that is made
6 generally available to other similarly situated district
7 school board employees.

8 (3) ASSESSMENT.--

9 (a) The school district's assessment of an
10 instructional personnel staff member must consider the
11 performance of students assigned to his or her classroom or,
12 in the case of co-teaching or team teaching, within his or her
13 sphere of responsibility.

14 (b) The assessment of a school-based administrator
15 must consider the performance of students assigned to his or
16 her school.

17 (c) A district school board must evaluate student
18 performance for purposes of this section based upon student
19 academic proficiency and gains in learning, as measured by
20 statewide standardized tests, or by the use of a securely
21 administered testing instrument that is valid as determined by
22 the district school board and that must be based on the
23 Sunshine State Standards for subjects and grades not measured
24 by a statewide assessment program.

25 (d) Other performance-related assessment criteria
26 adopted by the district school board may include indicators
27 that relate to the following criteria:

- 28 1. The ability to maintain appropriate discipline.
29 2. A high level of literacy and outstanding knowledge
30 of subject matter.
31 3. The ability to plan and deliver high-quality

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1 instruction and the high-quality use of technology in the
2 classroom.

3 4. The ability to use diagnostic and assessment data
4 and design and to implement differentiated instructional
5 strategies in order to meet individual student needs for
6 remediation or acceleration.

7 5. The ability to establish and maintain a positive
8 collaborative relationship with students' families for the
9 purpose of increasing student achievement.

10 6. The Florida Educator Accomplished Practices and any
11 other professional competencies, responsibilities, and
12 requirements, as established by rules of the State Board of
13 Education and policies of the district school board.

14 7. For school-based administrators, in addition to
15 subparagraphs 1.-6.:

16 a. The ability to manage human, financial, and
17 material resources so as to maximize the share of resources
18 used for direct instruction, as opposed to overhead or other
19 purposes; and

20 b. The ability to recruit and retain high-performing
21 teachers.

22 8. Other appropriate factors identified by the
23 district school board.

24 (4) DUTIES.--

25 (a) Each district school board shall inform its
26 employees of the criteria and procedures associated with the
27 school district's Merit Award Program plan.

28 (b) The department shall provide technical assistance
29 to school districts for the purpose of aiding the development
30 of Merit Award Program plans. The advice and recommendations
31 offered by the department under this paragraph are not subject

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1 to the requirements of chapter 120. The department shall
2 review and approve model Merit Award Program plans for
3 potential use by districts or charter schools.

4 (5) REVIEW OF PERFORMANCE-BASED PAY PLANS.--

5 (a) Each participating district school board must
6 submit its Merit Award Program plan to the Commissioner of
7 Education for review by October 1 of each year. The plan must
8 include the negotiated, district-adopted plan or charter
9 school adopted plan if the district does not submit a plan
10 intended for use in the following year. The commissioner shall
11 complete a review of each plan submitted and determine
12 compliance with the requirements of this section by November
13 15 of each year. If a submitted plan fails to meet the
14 requirements of this section, the commissioner must identify
15 in writing the specific revisions that are required. Revised
16 plans must be finalized and resubmitted by a school district,
17 or by a charter school if the district does not submit a plan,
18 for the commissioner's review by January 31 of each year. The
19 commissioner shall certify those school district or charter
20 school plans that do not comply with this section to the
21 Governor, the President of the Senate, and the Speaker of the
22 House of Representatives by February 15 of each year.

23 (b) Any charter school that does not follow the school
24 district's salary schedule may submit a separate proposal with
25 the district's plan. Charter school proposals shall be
26 included with the school district plans or may be submitted
27 independently if the district does not submit a plan. Charter
28 school proposals must follow the district's plan or an
29 alternative model plan approved by the department under
30 paragraph (4)(b).

31 (c) Each district school board shall establish a

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procedure to annually review both the assessment and compensation components of its plan in order to determine compliance with this section. After this review and by October 1 of each year, the district school board shall submit a report to the Commissioner of Education, along with supporting documentation that will enable the commissioner to verify the district's compliance with this section during the prior school year. The commissioner shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives certifying those school district or charter school plans that do not comply with this section or whose plans were not implemented in accordance with this section by December 1 of each year.

(d) For purposes of the 2007-2008 school year, the plan submitted as required in paragraph (a) applies to the 2007-2008 school year as well as the 2008-2009 school year. Thereafter, all plans submitted and approved within the timelines set forth in paragraph (a) apply to the following school year.

(6) SUBSEQUENT REVISIONS OF APPROVED PLANS.--Any revision to an approved Merit Award Program plan must be approved by the district school board and reviewed by the commissioner to determine compliance with this section.

(7) RULEMAKING.--The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

Section 2. Paragraph (a) of subsection (22) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

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1 (22) "Compensation" means the monthly salary paid a
2 member by his or her employer for work performed arising from
3 that employment.

4 (a) Compensation shall include:

5 1. Overtime payments paid from a salary fund.

6 2. Accumulated annual leave payments.

7 3. Payments in addition to the employee's base rate of
8 pay if all the following apply:

9 a. The payments are paid according to a formal written
10 policy that applies to all eligible employees equally;

11 b. The policy provides that payments shall commence no
12 later than the 11th year of employment;

13 c. The payments are paid for as long as the employee
14 continues his or her employment; and

15 d. The payments are paid at least annually.

16 4. Amounts withheld for tax sheltered annuities or
17 deferred compensation programs, or any other type of salary
18 reduction plan authorized under the Internal Revenue Code.

19 5. Payments made in lieu of a permanent increase in
20 the base rate of pay, whether made annually or in 12 or 26
21 equal payments within a 12-month period, when the member's
22 base pay is at the maximum of his or her pay range. When a
23 portion of a member's annual increase raises his or her pay
24 range and the excess is paid as a lump sum payment, such lump
25 sum payment shall be compensation for retirement purposes.

26 6. Effective July 1, 2002, salary supplements made
27 pursuant to s. 1012.72 requiring a valid National Board for
28 Professional Standards certificate, notwithstanding the
29 provisions of subparagraph 3.

30 7. Effective July 1, 2007, salary supplements made
31 pursuant to s. 1012.225 notwithstanding subparagraph 3.

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1 Section 3. Paragraph (c) is added to subsection (2) of
2 section 447.403, Florida Statutes, to read:

3 447.403 Resolution of impasses.--

4 (2)

5 (c) If the district school board is the public
6 employer and an impasse is declared under subsection (1)
7 involving a dispute of a Merit Award Program Plan under s.
8 1012.225, no mediator or special magistrate shall be appointed
9 unless both parties agree to such an appointment. If a party
10 does not agree to an appointment, the appointment shall be
11 considered waived and the parties shall proceed directly to
12 resolution of the impasse by the district school board
13 pursuant to paragraph (4)(d).

14 Section 4. From the general revenue funds appropriated
15 pursuant to Specific Appropriation 91 in section 2 of chapter
16 2006-25, Laws of Florida, the sum of \$147,500,000 is rescinded
17 and shall revert unallocated to the General Revenue Fund on
18 the effective date of this section, and the following proviso
19 language following Specific Appropriation 91 in section 2 of
20 chapter 2006-25, Laws of Florida, is repealed:

21
22 From the funds in Specific Appropriation 91, \$147,500,000 is
23 provided for the Special Teachers are Rewarded performance pay
24 plan (STAR plan). Funds shall be distributed to school
25 districts for performance pay rewards to instructional
26 personnel as defined in section 1012.01(2) (a)-(d), Florida
27 Statutes, in all K-12 schools in the district, in accordance
28 with the requirements of section 1012.22, Florida Statutes.
29 STAR Plan funds shall be allocated based on each district's
30 proportion of the state total K-12 base funding, subject to
31 review and approval by the State Board of Education of the

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1 district's STAR plan. The district's STAR plan may include
2 information from the district's instructional personnel
3 assessment system, and shall include instructional personnel
4 evaluation based on the performance of their students. The
5 Department of Education shall develop model methodologies that
6 ensure fairness and equity for all instructional personnel,
7 and shall provide technical assistance upon request.

8
9 Each school district that chooses to participate in the STAR
10 Plan shall submit its comprehensive STAR plan, which shall
11 include rewards for elementary, middle, and high school
12 instructional personnel, to the State Board of Education by
13 December 31, 2006. Any charter school that does not follow the
14 district's salary schedule may submit a separate proposal with
15 the district's plan. Charter school proposals shall be
16 included with the district plans or may be submitted
17 independently if the district does not submit a plan.

18 Districts that do not submit a plan by December 31, 2006,
19 shall not be eligible to receive STAR Plan funds. The State
20 Board shall review each district's STAR Plan within 45 days of
21 receipt and shall approve the plan or request revisions. If
22 requesting revisions, the State Board must identify the
23 specific area(s) of the proposed plan needing revision.

24 Districts must submit their revised plan by March 1, 2007. The
25 State Board shall review the revised plan and may either
26 approve the revised plan or deny the district eligibility to
27 receive STAR Plan funds for the 2006-2007 fiscal year. STAR
28 Plan funds shall not be recalculated during the fiscal year
29 except that funds allocated for districts that fail to adopt
30 approved STAR Plans by April 1, 2007, shall be redistributed
31 to those districts that have approved plans in place by the

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1 required date. The redistribution calculation shall be
2 verified by the Florida Education Finance Program
3 Appropriation Allocation Conference.

4
5 District STAR Plans must meet the following guidelines:

6
7 1. Eligibility - All instructional personnel are
8 automatically eligible to receive rewards for improved student
9 achievement without having to apply.

10
11 2. Determination of number of rewards - The district plan
12 shall utilize funds received under this program for rewards of
13 at least 5 percent of the base pay of the best performing 25
14 percent of instructional personnel. Districts shall use any
15 remaining funds to provide bonuses to additional instructional
16 personnel or school-based leaders pursuant to their plans.
17 District school boards are encouraged to provide additional
18 rewards to instructional personnel they determine to be
19 outstanding. District school boards shall distribute funds for
20 State Board approved charter school plans to charter schools
21 based on each charter school's proportion of the district's
22 total K-12 base funding.

23
24 3. Evaluation instrument - Each district school board shall
25 select or develop an evaluation instrument. The instrument's
26 primary determining factor shall be the evaluation of improved
27 student achievement. The instrument's factors shall be scored
28 using the following categories, or categories that are
29 substantially similar in number and connotation:
30 unsatisfactory, needs improvement, satisfactory,
31 high-performing, and outstanding. Instructional personnel must

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1 receive no unsatisfactory or needs improvement ratings and may
2 receive no more than one satisfactory rating on the areas
3 evaluated in order to receive a reward.

4
5 4. Instructional personnel evaluation based on student
6 performance - District school boards shall determine
7 appropriate methods to evaluate instructional personnel based
8 on the performance of their students. The methods must measure
9 improved student achievement during the course of the school
10 year; and must be approved by the State Board of Education.

11 a. Evaluation of improved student achievement for
12 instructional personnel linked by course numbers to
13 instruction in reading or math shall be determined by a
14 standardized test.

15 b. Evaluation of improved student achievement for
16 instructional personnel not linked by course numbers to
17 instruction in reading or math shall be determined by
18 instruments that measure the Sunshine State Standards for the
19 area, including challenging grade-level content and critical
20 thinking skills. District school boards shall develop methods
21 to evaluate improved student achievement in specialized areas,
22 including exceptional student education, fine arts, career and
23 technical education, and other specialties so that all
24 instructional personnel are eligible for rewards.

25 c. Evaluation of improved student achievement for
26 secondary instructional personnel linked by course number to
27 instruction in social studies or science may be assessed by a
28 standardized test; by linking improved student achievement in
29 reading or mathematics of the students enrolled in the
30 instructional personnel's social studies or science class, as
31 measured by a standardized test; or by instruments that

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1 measure the Sunshine State Standards for the area, including
2 challenging grade-level content and critical thinking skills.

3

4 District school board STAR Plan proposals may include a
5 methodology for performance pay rewards for district-selected
6 school-based leaders who supervise or directly assist the
7 instructional personnel whose student achievement results in a
8 STAR Plan reward.

9 Section 5. The recurring sum of \$147,500,000 from the
10 General Revenue Fund is appropriated to the Department of
11 Education for the 2006-2007 fiscal year as a supplemental
12 appropriation for Aid to Local Governments, Grants and Aids --
13 Florida Education Finance Program. These funds shall be
14 allocated among school districts based on each district's
15 proportion of the state total K-12 base funding and shall be
16 expended for any of the following purposes:

17 (1) To fund Special Teachers Are Rewarded (STAR)
18 performance pay plans that are implemented based on proviso
19 language following Specific Appropriation 91 in section 2 of
20 chapter 2006-25, Laws of Florida;

21 (2) To fund performance pay policies adopted pursuant
22 to s. 1012.22, Florida Statutes; or

23 (3) To fund performance pay policies approved by the
24 district school board which distribute performance pay to the
25 top performing instructional personnel and school-based
26 administrators. The top performing instructional personnel and
27 school-based administrators must include at least 20 percent
28 and no more than 80 percent of the school district's
29 instructional personnel and school-based administrators. The
30 policies are subject to negotiation as provided in chapter
31 447, Florida Statutes, except that if an impasse occurs

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1 pursuant to s. 447.403, Florida Statutes, a mediator or
2 special magistrate shall be appointed only if both parties
3 agree to such appointment. If a party does not agree to such
4 appointment, the appointment shall be considered waived and
5 the parties shall proceed directly to resolution of the
6 impasse by the district school board pursuant to s.
7 447.403(4)(d), Florida Statutes.

8
9 Each school district shall refund the undisbursed balance of
10 its allotment from this appropriation as of September 1, 2007,
11 to the Department of Education. If such funds are not remitted
12 to the department by October 1, 2007, the department shall
13 withhold an equivalent amount from the district's allocation
14 from the Florida Education Finance Program for the 2007-2008
15 fiscal year.

16 Section 6. Section 3 of chapter 2006-26, Laws of
17 Florida, is repealed.

18 Section 7. Effective June 30, 2007, s.
19 1012.22(1)(c)4., Florida Statutes, is repealed. Rules adopted
20 by the State Board of Education pursuant to s. 1012.22,
21 Florida Statutes, which are in conflict with this act are
22 suspended.

23 Section 8. This act shall take effect upon becoming a
24 law.